



ADJUDICATION ORDER

In the Matter of:

Jeffrey L. Morgan
108 North Main Street
Englewood, OH 45322

IN THE MATTER OF THE ELIGIBILITY OF JEFFREY L. MORGAN TO MAINTAIN LICENSURE AS A PROFESSIONAL CLINICAL COUNSELOR IN THE STATE OF OHIO.

THE MATTER OF JEFFREY L. MORGAN CAME BEFORE THE COUNSELOR PROFESSIONAL STANDARDS COMMITTEE OF THE OHIO COUNSELOR, SOCIAL WORKER, AND MARRIAGE AND FAMILY THERAPIST BOARD ON JANUARY 21, 2005.

FINDINGS, ORDER, AND JOURNAL ENTRY

This matter came for consideration after a Notice of Opportunity for Hearing was issued to Jeffrey Morgan by the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board on March 20, 2004. An administrative hearing was held on October 20, 2004, at 9:00 a.m. in the offices of the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board, 77 S. High Street, Columbus, Ohio 43215, pursuant to Chapter 119 and Section 4757 of the Ohio Revised Code. Assistant Attorney General Juliane E. Barone represented the State. Jeffrey Morgan was present and was represented by counsel, J. David Turner.

State's Exhibits

- A. Invoices from ABC Counseling
- B. Invoices from ABC Counseling

- D. Letter dated July 1, 2003, from J. David Turner, counsel to Dr. Morgan, to Jason Schutte, investigator for the Board
- E. Letter dated July 11, 2003, from Mr. Schutte to Mr. Turner
- F. Letter dated August 6, 2003, with attachments, to Mr. Schutte from Mr. Turner
- G. Consent Agreement between the Board and Jeffrey Morgan dated July 16, 1999
- H. Notice of Opportunity for Hearing dated March 20, 2004, to Jeffrey Morgan from the Board.
- I. Letter dated April 13, 2004, from Dr. Morgan to the Board requesting an administrative hearing.
- J. Letter dated April 20, 2004, from the Board to Dr. Morgan scheduling an administrative hearing and continuing that hearing.
- K. Letter dated May 19, 2004, to David Skall, Esq. From the Board
- L. Entry granting continuance dated August 2, 2004, in the matter of the licensure of Jeffrey Morgan, LPCC
- M. Letter dated August 11, 2004, from the Board to Mr. Turner scheduling Dr. Morgan's administrative hearing

Respondent's Exhibits

1. Memorandum dated December 18, 1999, from Dr. Morgan to Elvia Thomas
2. Professional Disclosure Statement prepared by Dr. Morgan
3. Packet from 1999 including a Contract for Personal/Consulting Services with invoices
4. Contract for Personal/Consulting Services for calendar year 2000 with attachments

The Counselor Professional Standards Committee has reviewed the transcript of the administrative hearing, exhibits, and Hearing Officer Report and Recommendations prepared in this case following the administrative hearing. The Report and Recommendations is attached to this Order. The Committee accepts and modifies the Report and Recommendations. The Committee finds that Dr. Morgan violated Ohio Revised Code Section 4757.36(A)(1) and Former Ohio Administrative Code Section 4757-5-01(B)(1). The Committee Orders that:

a. Dr. Morgan's license to practice counselor (E-1115) is suspended for five years beginning February 1, 2005, through January 31, 2010.

b. Dr. Morgan obtain sixty (60) clock hours in non-repeatable ethics trainings over the five-year suspension. These hours must be pre-approved by the Board's Deputy Director or his designee. Morgan is responsible for sending certificates of attendance of these hours to the Board's Deputy director following completion of the trainings. These hours accumulated under this provision will not count toward the renewal of Dr. Morgan's counselor license.

c. If Dr. Morgan wants to return to practice as a counselor after the suspension of his license ends, he must have complied with all renewal responsibilities for his counselor license over the period of suspension.

This ORDER was approved by unanimous vote of the Members of the Committee who reviewed this case.

Motion carried by order of the Counselor Professional Standards Committee of the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board.

APPEAL RIGHTS

Under the provisions of Ohio Revised Code Section 119.12, any party adversely affected by an order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a license, or revoking or suspending a license, may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident. If any such party is not a resident of and has no place of business in Ohio, the party may appeal to the court of common pleas of Franklin County

This *Order* may be appealed in accordance with Section 119.12 of the Ohio Revised Code by filing the original Notice of Appeal with the Ohio Counselor, Social Worker, and Marriage and Family Therapy Board, 77 S. High Street, 16th Floor, Columbus, Ohio 43215, and also a copy of that Notice of Appeal with the Court of Common Pleas in the county of the party's place of business, or in the county in which the party is a resident. The Notice of Appeal shall set forth the Order appealed from and the grounds of the Party's appeal. Such Notice of Appeal and copy shall be filed and must be delivered within fifteen (15) days after the mailing of this *Adjudication Order*.

By Order of the State of Ohio Counselor, Social Worker, and Marriage and Family Therapist Board.

Rose Quinones-DelValle, PCC
Rose Quinones-DelValle, PCC
Chair

Certification of Service

I hereby certify that a true copy of the foregoing ADJUDICATION ORDER was sent via U. S. Certified Mail, Return Receipt Requested, Article #7002 2030 0000 7089 7151, to Dr. Morgan's counsel, J. David Turner, Esq., Southern Hills Plaza, 2555 S. Dixie Drive, Suite 101-A, Kettering, Ohio 45409 on this 24th day of January 2005.

William L. Hegarty
William L. Hegarty, Interim Executive Director
Ohio Counselor, Social Worker, and Marriage and Family Therapist Board

STATE OF OHIO

COUNSELOR AND SOCIAL WORKER BOARD

IN THE MATTER OF THE
LICENSURE OF

Jeffrey Morgan

REPORT AND RECOMMENDATION OF
HEARING EXAMINER

AS A PROFESSIONAL CLINICAL COUNSELOR
IN THE STATE OF OHIO

November 18, 2004

FOR THE RESPONDENT:

J. David Turner
Southern Hills Plaza
2555 S. Dixie Drive
Suite 101-A
Kettering, OH 45409
937/299-9900

HEARING EXAMINER:

Ronda Shamansky
245 East Gay Street
Columbus, Ohio 43215-3210
614/224-9078

FOR THE BOARD:

Juliane Barone
Assistant Attorney General
Health & Human Services Section
30 E. Broad St., 26th Floor
Columbus, Ohio 43215
614/466-8600

FINDINGS OF FACT:

1. The hearing on this matter was held on Wednesday, October 20, 2004 commencing at 9:00 a.m. in a conference room at the offices of the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board, 77 South High Street, Columbus, Ohio. The Board was represented by Juliane Barone, Assistant Attorney General. The licensee, Jeffrey Morgan, was represented by J. David Turner. The hearing allowed the opportunity for direct and cross examination of witnesses, the submission of documents, and for arguments to be made.

2. At the hearing, Dr. Morgan's counsel moved for a separation of witnesses and the State did not object. The motion was granted. The State stipulated at the outset that although a previous Consent Agreement is cited in the Board's Notice of Opportunity for Hearing (State's Exhibit H) it is not charging Dr. Morgan with having *violated* that agreement. Because this case concerns services provided to mental health clients, the parties also entered a stipulation that if a record of this case is certified for appeal, client names will be redacted from all documents.

3. The Board has proposed disciplinary action against Dr. Morgan's license to practice in Ohio as a licensed professional clinical counselor (LPCC) for allegedly misrepresenting his professional qualifications. The Board contends that between December 20, 1999 and December 21, 2000, Dr. Morgan represented his services to be psychological in nature and signed client documents with credentials that implied licensure as a psychologist rather than as an LPCC. The Board's Notice of Opportunity for Hearing cites former Ohio Revised Code Section 4757-5-01(B)(1) and Ohio Revised Code section 4757.36(A)(1) as its authority to take action against his license (State's Exhibit H.) R. C. 4757.36(A)(1) gives the Board the authority to revoke, suspend, or place restrictions on a person's license for any violation of the laws or rules governing social work. The administrative rule cited provides in relevant part as follows:

4757-5-01 Code of ethical practice and professional conduct.
(B) Responsibility to clients/consumers of services:
(1) Competency

(a) Counselors or social workers shall not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience, or area(s) of competence.

(b) Counselors and social workers may practice only within the competency areas for which they are qualified by education, training or experience. Counselors and social workers shall maintain appropriate standards of care. Standards of care shall be defined as what an ordinary, reasonable professional with similar training would have done in a similar circumstance.

(c) Licensees must make appropriate referrals when the client's needs exceed the counselor's or social worker's competence level. The referrals must be made in a timely manner. ¹

The Board's Notice of Opportunity for Hearing was issued March 20, 2004. (State's Exhibit H) Dr. Morgan made a timely request for a hearing through his letter dated April 13, 2004. (State's Exhibit I) He received notice of the initial hearing date, notice of two continuances of that date (one at his request), and notice of the hearing ultimately held on October 20, 2004. (State's Exhibits J, K, L, and M.)

4. At the hearing, the State called witnesses who identified documents and also testified about their investigation of the complaint leading up to these charges. The State's first witness was Jason Schutte, who testified that although he is now an investigator with the Board that licenses occupational and physical therapists and athletic trainers, he investigated this complaint while he was employed with the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board during the relevant dates of this case. He testified that he first became involved in this case in early 2003, when the Board got a complaint that Dr. Morgan was misrepresenting himself as a psychologist or that his services were psychological in nature. On cross-examination, he stated that the complaint was referred to this Board by Kelly Coleman, an investigator for the Ohio Board of Psychology. Mr. Schutte testified that he obtained documentation about how Dr. Morgan's billing was

¹The State's Notice of Opportunity refers to this administrative rule as a *former* code section because it was the rule in place at the time of the alleged violations cited in the Notice. That Rule was amended so as to include additional provisions, effective April 10, 2004.

submitted, and he observed from those documents that Dr. Morgan's signature on billing statements titled "Psychological Services" never included his LPCC credentials, but instead listed his credentials as "Psy. D." He identified State's Exhibit A as a packet of Dr. Morgan's billing statements that had been submitted for payment to the Department of Mental Retardation and Developmental Disabilities (MRDD) that he had obtained through his investigation.

5. Mr. Schutte testified that he contacted Dr. Morgan and was referred to his counsel. He scheduled a meeting with Dr. Morgan and his attorney for June 2003, and at that meeting, he presented State's Exhibit B, which he described as a "sampling" of Dr. Morgan's invoices, noting that the invoice style had changed several times. Although Dr. Morgan and his counsel were not permitted to make photocopies of these documents, Mr. Schutte testified that his counsel, in effect, "copied them without a copy machine," by taking extensive notes. Mr. Schutte explained that Dr. Morgan and his counsel were not allowed to copy the documents because information obtained during an investigation is confidential, and it is the practice of the Board to keep the investigatory file confidential under the records laws. He explained that these were Dr. Morgan's own records, so he should have been able to access them in his own files.

6. Mr. Schutte testified that the purpose of this meeting was to get Dr. Morgan's response to the complaint against him, and that it is a standard investigatory practice of the Board. He testified that Dr. Morgan and his attorney provided no response to the complaint about the credentialing issue at that meeting. At the end of the meeting, Mr. Schutte testified that Dr. Morgan's counsel indicated that they would submit a written explanation within two weeks. After one month, he had not received a response, so he contacted Dr. Morgan's counsel. In response, he got a letter from Dr. Morgan's counsel (State's Exhibit D) saying that Dr. Morgan could not respond because he did not have the documents that he requested. Mr. Schutte then issued the letter identified as State's Exhibit E, reiterating the Board's position that the documents in question are all those of Dr. Morgan's company, and posing six specific questions to Dr. Morgan for his response.

7. About three weeks later, according to Mr. Schutte's testimony, he received a packet of documents from Dr. Morgan's counsel in response to his letter and his six questions. (State's Exhibit F) Mr. Schutte testified that he received only one document that indicated that Dr. Morgan was signing billing statements as an LPCC, the document from February 1999 at the end of the packet showing services in February 1999, in which he signs "LPCC" as well as "Psy. D." On cross-examination, Mr. Schutte acknowledged that his letter hadn't requested several billing statements; it merely asked Dr. Morgan to "provide a billing statement in which Dr. Morgan uses his professional clinical counselor license," and in response, he had been supplied with only one such document.

8. Mr. Schutte was also cross-examined about his sources of information during his investigation. Mr. Schutte testified that the complaint was referred to him by Kelly Coleman, an investigator for the Ohio Board of Psychology, who supplied some of her documents to him. There was a meeting scheduled between Mr. Schutte, Kelly Coleman, and Amy Taylor, who was with the Department of Mental Retardation and Developmental Disabilities ("MRDD.") A short time later, Mr. Schutte met with Amy Taylor again and she brought her file with her. Mr. Schutte was asked on cross-examination how he ascertained the reliability of documents that Ms. Taylor provided. He testified that he assumed an employee of MRDD would have authentic MRDD documents.² The cross-examination also emphasized Mr. Schutte's testimony that he did not ask MRDD for provider contracts because he had already asked Dr. Morgan to provide those. On cross examination, he acknowledged that he did not obtain case evaluations, explaining that those are client documents and he did not have a release, nor a means of knowing how to reach the clients to get a release. He testified that he had investigatory subpoena power to obtain some documents, but not client records without a release. Mr. Schutte also acknowledged on cross that he did not interview anyone at MRDD to determine what licensure had been supplied for Dr. Morgan's contracts for the years 1999 and 2000.

²Although there was a great deal of cross-examination concerning the authenticity of the documents, no genuine question about their authenticity ever materialized, as Dr. Morgan acknowledged during his testimony that the documents in State's Exhibit A were his billing statements.

9. The State called Jeffrey Morgan, as on cross-examination, and he was questioned extensively by the State and by his own counsel on redirect. Dr. Morgan testified that he has a doctorate of psychology degree, but that he is not licensed as a psychologist with the Ohio Board of Psychology. Instead, he has an active license as a licensed professional clinical counselor ("LPCC") with the Ohio Board of Counselors, Social Workers, and Marriage and Family Therapists. He admitted in response to the State's question that he has been reprimanded by this Board for presenting a false Ohio State Board of Psychology certificate to an employer. (State's Exhibit G)

10. Dr. Morgan testified that he is a one-third owner of ABC Counseling Center, and that the other owners are his wife, Mary Jo Morgan, and Paul Papanek, a licensed psychologist. The documents provided by Dr. Morgan through his counsel indicate the Mary Jo Morgan is licensed as a registered nurse and as a licensed massage therapist (State's Exhibit F). Dr. Morgan testified that during the relevant time period of 1999-2000, he had a contract to provide services to MRDD, but that he did not provide that contract to the Board during the investigation. He acknowledged that the only MRDD contract with his signature that he provided to the Board was the one dated 9-15-98 and contained in State's Exhibit F (Tr. pp. 110-111.) He identified the documents attached to State's Exhibit F as the ones he gave to his counsel to forward to the Board.

11. Dr. Morgan identified State's Exhibit A, acknowledging that the documents in the packet are all invoices used by ABC Counseling, even though the invoice style had changed (Tr. p. 104) He testified that the signatures which purport to be his "looked like" his signature, and that he used the credential "Psy.D" and not "LPCC" (Tr. pp. 104-105.) He testified that part of the services ABC provided to MRDD were to clients in homeless shelters, and that Paul Papanek provided all the psychological services while he provided the counseling and behavioral management services (Tr. pp. 113-114, 119.) He testified that he did not create the invoice format, and that he believes his wife, Mary Jo Morgan, created it using as a template provided by the Montgomery County Board of MRDD, and that she made revisions

to it from time to time (Tr. p. 118, 167-168.) He acknowledged that although he is a one-third owner of ABC Counseling, his name is the only one that appears at the top of some of the invoices, and on the letterhead styles which include a credential, his "Psy. D" is the only credential indicated.

12. Dr. Morgan testified that he provides standard counseling services to individuals, children, and families, and he contends that the billing invoices in State's Exhibit A do not indicate that he was providing psychological services (Tr. pp. 126-127.) When directed to the first entry on the first page of State's Exhibit A, Dr. Morgan replied that "Psych. Eval" was an abbreviation for a psychiatric evaluation and that he doesn't abbreviate "psychology" with "p-s-y-c-h." He testified that in this particular example, he did a diagnostic assessment so the patient could be referred to a psychiatrist and that the psychiatrist provided medication while he (Dr. Morgan) did the behavioral management (Tr. pp. 157-159.) He admitted that Mary Jo Morgan submitted the invoices in State's Exhibit A for payment on his behalf, and he acknowledged that the invoices are titled "Psychological Services," and that when he signed his name, he indicated "Psy.D." as his credentials. (Tr. pp. 171-172.) He testified that he didn't believe he was holding himself out as a psychologist because these were just billing statements, and the people to whom they were submitted already knew his credentials (Tr. pp. 150-151, 177-178.) When asked if he was providing "psychotherapy," he responded that it was a confusing term, explaining that there's no other billing code on the forms for what he does. (Tr. pp. 181-182.)
13. At one point in the hearing, counsel stipulated to count the number of invoices in Exhibit A to determine how many have Dr. Morgan's signature. It was agreed that twenty-two of the pages were not signed by Dr. Morgan, but that five of the invoices were signed by him with "Psy.D." after his signature (Tr. pp. 149-150) For those invoices with Mary Jo Morgan's signature, Dr. Morgan testified that his wife prepared those documents from his handwritten time logs, and that she added nothing substantive, although she might make a correction if she found a mathematical error in billing (Tr. pp. 235-236.) He testified that he had not indicated in his log that the document should be titled "Psychological Services for Emergency Shelter by Dr. Jef-

frey Morgan and Mary Jo Morgan" as seen on some of the invoices in the middle of the packet. (See, e.g., Invoice 10061) When asked why invoices were used that listed "Psy.D" on his letterhead instead of "LPCC," Dr. Morgan testified, "I really don't have an answer why [Mary Jo] did that. Maybe the original template was that way." (Tr. pp. 183-184.) Dr. Morgan testified that he reviewed only the invoices that had his signature on them, and that he didn't think he had to double-check Mary Jo Morgan's invoices before they were submitted for payment. (Tr. p. 240.) He testified that all of the invoices in State's Exhibit A were different modifications that Mary Jo Morgan made to an MRDD billing template. He also testified that Dr. Paul Papanek, the psychologist, typically billed separately for his services (Tr. p. 164.) Although Dr. Morgan's testimony was that Paul Papanek provided all of the psychological services that ABC Counseling delivered, he admitted that either his signature or Mary Jo Morgan's signature was on the invoices contained in State's Exhibit A, not Paul Papanek's signature.

14. When asked why he did not include his LPCC credentials on the documents contained in State's Exhibit A, he testified that he considered these to be "billing statements" and the people with whom he had these contracts already had that information about his licensure (Tr. p. 150.) He referred to Respondent's Exhibit 1, which he identified as a Memorandum to his supervisor at MRDD, Elvia Thomas, forwarding licensure credentials to her for the 2000 contract. The State noted that this document was never provided to the Board nor to the Assistant Attorney General until 7:00 p.m. on the night before the hearing, and that was not disputed by Dr. Morgan's counsel (Tr. p. 129.) Dr. Morgan testified that he sent this document to Elvia Thomas prior to commencing work on the contract, and that he provided a similar document in 1999 as well, but that he did not have documentation with him. He testified that he sent his disclosure statement to Ms. Thomas as well, but he acknowledged on cross-examination that it did not indicate on the document that it had been sent to her and that Respondent's Exhibit 1 is the only document he had with him that showed he had provided evidence of his credentials to anyone at MRDD. (Tr. pp. 111, 141-142.) He testified that he also displayed his license and disclosure statements in the building that he used when he worked with clients (Tr. pp. 142-143.)

15. Dr. Morgan was also questioned about his contract with United Behavioral Health ("UBH"), which his counsel provided in response to Board Investigator Jason Schutte's letter. (State's Exhibit F) He testified that the UBH contract appears to be with him personally, and not with ABC Counseling. He further testified that neither Dr. Papanek nor Mary Jo Morgan had a contract with UBH (Tr. pp. 124-125.) Dr. Morgan indicated during his testimony that for this contract, he listed his license type as LPCC and his license number as 1115. (Tr. pp. 144-146) On cross-examination, Dr. Morgan was asked if his license number was really E-1115, and he testified that "technically it's E-1115, yeah." (Tr. pp. 164-165.) He was asked on cross-examination if it was correct that psychologists' license numbers contain only numbers but that counselors' license numbers contain numbers and letters, and he stated that he did not know the answer to that question. (Tr. p. 165.)

16. In response to my questions, Dr. Morgan explained that he did pursue licensure as a psychologist, but was not successful. He testified that he has learning disabilities (ADHD) that made test-taking difficult. He testified that he sat for the exam and was unsuccessful. Thereafter, he was placed on medication by a neurologist to help him focus, but the medication actually made him more impaired. He stated that he later found out that the medication was a methamphetamine called "Adderall." He became very emotional during his testimony, stating that he had a 3.85 grade point average at the Fielding Institute in Santa Barbara, an accredited institution, and that he completed a dissertation on community psychology, earning his degree in October 1992 (Tr. pp. 185-187.)

17. At the hearing, Dr. Morgan was asked why he signed the documents in State's Exhibit A as a "Psy. D." instead of as an "LPCC." He answered, "the whole nature of the way that the form was made up, for me, was confusing" and that he counted on Elvia Thomas knowing his credentials (Tr. p. 191.) I asked if he had ever suggested that the form should be modified to be more clear, and he testified that he had added the words "Emergency shelter" at the top of the form to clarify it, because he was the one with the primary responsibility for the emer-

agency shelter. (Tr. pp. 191-193.) I asked Dr. Morgan if he thought the form was confusing now, in hindsight, and he answered, "It's not confusing to me. It was just an invoice going to my supervisor and she already knew my credentials. It was understood." In response to my question about whether it is within an LPCC's scope of practice to do psychotherapy, Dr. Morgan testified that when a counselor or social worker bills Medicaid, it's billed as psychotherapy and called a "psych eval" even if it's just an intake interview. He testified that he couldn't bill for those services if he called it anything other than psychotherapy. He acknowledged that the clients whose services are described on the invoices at State's Exhibit A were residents of a homeless shelter or a group home, and that it wasn't actually psychotherapy he was providing; he was providing counseling and behavioral management, but he testified that he couldn't bill for those services unless he called it psychotherapy (Tr. pp. 198-204.)

18. The State's final witness was William Hegarty, who testified that he is the Deputy Director of the Counselor, Social Worker, and Marriage and Family Therapist Board, and that he took over the investigation of this case when Mr. Schutte left to work for another licensing board. Mr. Hegarty testified that he verified that the documents were true and accurate copies of Dr. Morgan's invoices by going to the Montgomery County MRDD offices to verify that the copies of documents were legitimate, including the signatures of Dave Gleason and Tom Schaffer (Tr. p. 213) He testified that he learned in his investigation that Dave Gleason's role was to approve the invoices for billing purposes and send them on to accounting. He stated that sometimes Mr. Schaffer did this, if Dave Gleason was unavailable (Tr. pp. 214-216.) Mr. Hegarty testified that he then went to the accounting department of the Montgomery County Auditor's office and met with Jim Bayer who looked at the records and said they were legitimate. (Tr. p. 217) Mr. Hegarty testified that he saw the original records in the county's records repository held by Ann Cavanaugh, and that he verified that he had true and accurate copies of them. (Tr. pp. 217-218) He testified that he observed that none of the original documents listed Dr. Morgan's LPCC credential. Although he was cross-examined about whether he had ever contacted Elvia Thomas to ask whether she had been provided with Dr. Morgan's credentials, and he replied that he hadn't, there was no disagreement that Respondent's Exhibit 1 (the

document purportedly conveying those credentials to her) was first provided to the State the evening before the hearing.

19. At this point in the hearing, in response to some questions concerning signatures, counsel for the State asked for a stipulation about the signatures in State's Exhibit A. Dr. Morgan's counsel agreed to stipulate "that these bills were prepared by Mary Jo Morgan and submitted to MRDD." (Tr. pp. 227-230.) Other potential stipulations were discussed, but then dissolved in discussions of whose handwriting was on the forms.
20. In the presentation of Dr. Morgan's case, his counsel called Elvia Thomas as a witness. She testified that she is the Deputy Superintendent of the Montgomery County Board of Mental Health, and that she has worked with Dr. Morgan since 1998, but that ABC Counseling Services is not currently on contract with MRDD. Ms. Thomas testified that she first worked with Dr. Paul Papanek and was pleased to find that Dr. Morgan was also willing to work with MR clients, because in her experience, many practitioners are not willing to serve those clients. Her agency needed someone to do behavior support, and Dave Gleason brought Dr. Morgan to her attention. Ms. Thomas testified that they were hiring behavior specialists and all that is required for that position is a college degree. She stated that they're paid very well because it is hard to find people to do this work.
21. Ms. Thomas testified that she first met Dr. Morgan when he and his wife contacted her in 1996 or 1997 about setting up a shelter (Tr. p. 272.) At that time, Dr. Papanek was already on contract with MRDD. She testified that although the first contract was with Dr. Papanek as an individual, later contracts were with "ABC Counseling Center," from around 1998 to 2000. She clarified on cross-examination that no contract with Dr. Morgan individually exists during the relevant time period. Instead the contracts are with ABC Counseling (Tr. pp. 308-310.) She also acknowledged that there is no document that gives a breakdown of services provided by each individual at ABC Counseling. She explained that initially, Dr. Papanek was paid \$80 an hour when the contract was with him individually, but that several years later, the agency "blended services" because it had three others willing to do

this work, so Dr. Papanek had to agree to take a lower rate. (Tr. pp. 299-300.) At that point in the process, the contract was with ABC Counseling, and Dr. Papanek agreed to a rate of \$60 an hour. She acknowledged on cross-examination that it "looked like" Dr. Morgan and Dr. Papanek were being paid the same hourly rate.

22. Ms. Thomas testified that most of Dr. Morgan's invoices were approved by Dave Gleason, or in his absence, by Waiver Administrator Tom Schaffer, or in *his* absence, very infrequently, she would sign. (Tr. pp. 256-257.) She identified her signature on the last page of State's Exhibit A, as her approval for payment of this invoice. She testified that after Dave Gleason approved invoices, she did not see them because they were sent to the business office. When asked if she was Dr. Morgan's supervisor, she stated that really Dave Gleason would have been his supervisor when he provided services to MRDD clients (Tr. p. 301.)

23. Ms. Thomas identified some of the documents contained in Respondent's Exhibit 3, which she said was prepared by the superintendent's office and not by her personally. She testified that the contract with ABC Counseling for 1999 begins on the second page of that document, and she identified the documents at the end of the packet as invoices for intake services that Dr. Papanek would have provided. Ms. Thomas testified that Mr. Gleason was not authorized to approve psychological evaluations, and that only Cindy Fry could do that. She testified that Cindy Fry approved only services provided by Dr. Papanek (Tr. pp. 285-286.) On cross-examination, she was directed to the document beginning 6 pages from the end of Exhibit 3, which purports to have been signed by Dr. Morgan and approved by Cindi Fry. She was asked if she had any idea why that invoice would be approved by Cindi Fry, and she had no explanation. In response to my question, Ms. Thomas acknowledged that State's Exhibit A is the same kind of form that Dr. Papanek used when he billed for his services.

24. Ms. Thomas identified Respondent's Exhibit 4 as the 2000 contract between MRDD and Mary Jo Morgan, dba ABC Counseling Center. She testified that Mrs. Morgan was not going to perform services individually to consumers, but that she might provide support to staff.

She identified the attachment as a copy of Paul Papanek's licensure card, but stated that that document would not be kept with the contract in the ordinary course of business.

DISCUSSION

The State has presented more than adequate evidence to persuade me that Dr. Morgan violated Rule 4757-5-01's mandate that counselors and social workers "shall not misrepresent directly, indirectly, or by implication their professional qualifications..." State's Exhibit A demonstrates so many examples of indications that would mislead a reader to believe that he is licensed as a psychologist that it is hard to count them all. On the first page, for instance, which Dr. Morgan admits is in his handwriting, the title of the page is "Psychological Services." The entries that follow contain descriptions of services such as "psych eval by Dr. Morgan" and "psychotherapy with" various patients. On the third page, which Dr. Morgan admits is his handwriting, two entries indicate "psychotherapy with Dr. Morgan," and he signs the page "Jeffrey Morgan, Psy.D." Anyone reading these invoices would think that Dr. Morgan is a licensed psychologist and not an LPCC. Throughout this entire packet of bills that were submitted for payment to MRDD, there is no mention of his licensure as an LPCC. It is clear that these services were performed by Dr. Morgan and not psychologist Paul Papanek, because Dr. Morgan testified that Dr. Papanek typically billed separately for his services. (Tr. p. 164) Nor was there any assertion at the hearing that the particular services indicated on these invoices were provided by Dr. Papanek.

Although Dr. Morgan testified that many of the invoices were prepared and signed by his wife, Dr. Morgan was the licensed professional, and he is the one who must be held responsible for the content of these invoices that were submitted to MRDD on his behalf. Additionally, the testimony indicated that Mrs. Morgan prepared these invoices from Dr. Morgan's handwritten time logs, and that she added nothing substantive. When he was asked about why he did not include his LPCC credentials on the invoices that appear at State's Exhibit A, Dr. Morgan testified "I just consider these billing statements and I wasn't really concerned about supplying my LPCC, because the people that I [sic] were providing these to already had that information." His explanation is insufficient. Billing statements, as much as anything else, indicate who the professional is and for what professional

services he is billing. I was not persuaded by his attempt to discount their significance.

In contrast to the billing statements at State's Exhibit A, the billing statement that Dr. Morgan provided to the Board through his counsel's letter at State's Exhibit F is markedly different. In that document, the title "Psychological Services" appears to have been crossed out, and Dr. Morgan signs as "Psy.D., LPCC." The text of the entries is also much different, referring to "behavioral assessments, evaluations, and plans." Nearly every entry contains the word "behavioral" and there is no mention of "psychotherapy" or "psych evaluations," as there is in State's Exhibit A.

Dr. Morgan's contention that Elvia Thomas, his supervisor, already knew his credentials provides no justification for his misrepresentation of himself as a psychologist. The Rule cited by the Board does not provide any exceptions that allow a licensee to misrepresent himself if some of the people receiving the documents already know the truth about his credentials. Furthermore, there was conflicting testimony about whether Elvia Thomas was indeed Dr. Morgan's supervisor. Although Dr. Morgan testified twice that Ms. Thomas was his supervisor and he submitted bills to her, which she would sign (or a subordinate in her absence) and forward to accounting, Ms. Thomas's testimony was different (Tr. pp. 132-133, 189-190.) When asked if she was Dr. Morgan's supervisor, she stated that "no really it was Dave Gleason." (Tr. p. 301) She testified that Dr. Morgan submitted bills to Dave Gleason, or in his absence, to Tom Schaffer, or in *his* absence, "very infrequently" to her for her signature (Tr. pp. 256-257.) Her explanation correlates with the testimony of William Hegarty, the Board's investigative supervisor who interviewed those at MRDD about the billing procedure (Tr. p. 215.) It is clear from the testimony that the billing statements were seen by others at MRDD besides Elvia Thomas, including at least Dave Gleason, Tom Schaffer, and the staff in accounting.

Elvia Thomas identified herself as a "layperson" throughout her testimony, and it was evident from her inability to answer questions about the specific services provided that she did not have a professional knowledge of counseling, social work, or psychology (Tr. pp. 257-258, 292.) She testified that she was "confused about what psychological services means," and that she would not know what service was being performed if she saw the words "psych evaluation" (Tr. pp. 288, 295). It is clear that she did not have the knowledge to know the substantive difference between the work done by a

psychologist and that done by an LPCC, nor what kind of work is appropriately billed by each professional. In addition, although Dr. Morgan had testified that he displayed his disclosure statement in the building where he saw patients, Elvia Thomas testified that these were MR patients. When asked if she knew whether Dr. Morgan had informed clients that he was a counselor and not a psychologist, Ms. Thomas replied, "There would not be the ability to understand or comprehend that on their part." (Tr. p. 296.)

Because the memo to Elvia Thomas attaching a copy of his licensure card provides the basis for Dr. Morgan's defense that she already knew his credentials, it does not make sense that this memo was not given to the Board nor even mentioned until fourteen hours before the hearing took place. The letter from Dr. Morgan's counsel answering Jason Schutte's six specific questions responds to Question 6 as follows:

6. Explain why the services on the bills presented at our June 3, 2003 meeting are represented as "psychological" and why Dr. Morgan fails to include his professional license.

Response:

We were not provided copies of the bills presented at the June 3rd meeting. However, Dr. Morgan has not represented himself as a psychologist. Those services were provided by Paul Papanek. Dr. Morgan concedes that at times his bills may have omitted "LPCC" after his name or signature. However, Dr. Morgan did not include "psychologist" after his signature or name." ³

At the hearing, the memo to Elvia Thomas and the explanation that "she already knew his credentials because he had made her aware of them and therefore it wasn't necessary to sign as an LPCC" was his defense against these charges. Yet he never provided that explanation to the Board until 7 p.m. on the evening before the hearing took place. If it were the obvious defense that it was presented as at the hearing, it would seem likely that Dr. Morgan would have brought it to the Board's attention early in the investigation. I asked Dr. Morgan at the hearing why he never provided that explanation to the Board's investigator when he was asked why the invoices represent his services as "psychological" and why he failed to include reference to his professional license. His answer was weak, at best:

Q: We've noted for the record, sir, that the memo which we've labeled Exhibit 1, the memo to Elvia Thomas, from you, show-

³State's Exhibit F, page 2.

ing your credentials, we've noted that this was never provided to the Board, I believe the Board's attorney, or the investigator, until last night at 7:00 p.m. Why not? Why wasn't it?

A: My understanding was in the original request from Mr. Schutte that he didn't ask for such a thing at the time. The six-I think the six things that he asked for-I tried to be real specific with what he was requesting.

Q: But if it's part of your explanation for why the MRDD board already knew that you were an LPCC and not a psychologist, why didn't you think to provide it earlier?

A: I admit I think it was tunnel vision on my part. At the time when Mr. Turner and I discussed, you know, providing--he kind of guided me that--I tend to kind of overdo it. I sometimes just--I overprepare or whatever, and to be real specific with--but as time went on that that--that has become real germane to me. If I'm answering your question. Initially, it didn't seem germane, but as time went on that was very germane. These folks knew what my credentials were. I was supplying information with. ⁴

Finally, although he was zealously-represented, I did not find Dr. Morgan to be a credible witness. As the trier of fact, I simply did not believe him. His demeanor was nervous and evasive. When asked direct questions about why he did things that would lead one to believe he was a psychologist and not an LPCC, he dodged the questions. When the State's counsel asked him about the credentials listed after his name on the invoices presented at State's Exhibit A, he provided the following response:

Q: You have a habit of referring to yourself as "Psy.D"; correct?"

A: When you say I have a habit, what do you mean?

Q: During the time period of December, '99 to December of 2000, you signed your name Psy.D. omitting your LPCC credentials, correct?

A: I still don't understand your question.⁵

I asked Dr. Morgan similar questions concerning the invoices submitted to MRDD, and I found his answers not credible:

Q: I'm still unclear. I just am - I just don't understand why you use Psy.D. when you sign rather than LPCC, is there some

⁴Tr. pp. 179-180.

⁵Tr. pp. 101-102.

reason?

A: It -- for me what was-- it-- there really isn't a reason other than the whole nature of the way the form was made up, for me was confusing, and the clarity that I was counting on was that Elvia, you know, had it -- she had a very clear handle on -- because I would provide her each contract period with my credentials, and then also Paul's credentials.

Q: If it was confusing to you, did you ever suggest to Mary Jo Morgan that the form be modified?

A: Yes, actually, I said that would be helpful. I didn't like the --it was-- the form was just too general. It was too generalized.

Q: Is there an example in this packet of where it was modified to make it less confusing?

A: That's what I was trying to say to Ms. Barone earlier. Where I would like my designation, I would put in emergency shelter, and that was mine--that was my attempt to clarify that what I was focusing on was emergency shelter. That was my primary commitment to MRDD.⁶

Dr. Morgan was also evasive and unconvincing in his responses to questions concerning whether he actually provided psychotherapy:

Q: Do you provide psychotherapy?

A: That's a real confusing term. In my United Behavioral Health contract I have -- it will --they have what they call CPT codes. It's 90806, and it says psychotherapy, even though they know I'm an LPCC, I put down a 90806. So it's confusing because, you know, I'm constantly putting down on HICFA forms, where you submit claims to those insurance companies, in the CPT codes I fill out -- there's not any other category for my services other than a 90806 or a 90807. The 90806 is called psychotherapy.

Q: As a licensed LPCC is your understanding of the scope of your license that you can perform psychotherapy?

A: To be really honest, it's a real double bind. It's real confusing, because I -- even though -- yeah, it's like an interchangeable term and it's one that really is very confusing for me because it's like, I'm forced to fill out a claim form saying that I do 90806 on a routine basis.⁷

⁶Tr. pp. 191-192.

⁷Tr. pp. 181-182.

In response to my questions about why he uses "Psy.D" instead of "LPCC" on his letterhead, Dr. Morgan again failed to convince me that he was being candid:

Q: I'm curious, why you would list the Psy. D. on the top of your letterhead rather than your LPCC, why is that?

A: I really don't have an answer to why she put that in. The only thing that I suspect is that the original template was made out that way, and that was by, you know, somebody like a bookkeeping kind of person from MRDD, but I think Mary Jo Morgan can probably speak more specifically to that than I can.

Q: But you as a professional were using this template to document services performed?

A: Yes, ma'am.

Q: And you're aware of your obligations about stating your credentials correctly and the licensure law?

A: The way I've always understood that is that, you know, that I had - that I would, you know, that I would - to me I would think of things, like, say a progress note, or - to be blunt or honest I didn't think of this as being - these were like invoices or - because the people that I was providing these for already had an understanding of my credentials.⁸

He also did not appear credible when he responded that he left out the "E" at the beginning of his license number on contracts, but that he did not know if psychologists' license numbers contain numbers only, or letters and numbers. (Tr. pp. 164-165.) He testified that he had forwarded copies of his license and psychologist Paul Papanek's license to Elvia Thomas for the years 1999 and 2000, and the document introduced as Respondent's Exhibit 1 shows a copy of Dr. Papanek's license card. It indicates a four digit number. Although the copy of Dr. Morgan's LPCC licensure card indicates that his license number is "E-0001115," he shortens the number on contracts so as to eliminate the letter and numbers preceding "1115," thereby making his license number appear to be a four digit number just like Dr. Papanek's license number. (Tr. pp. 164-165.) He has not persuaded me that this was accidental, nor that he did not know how psychologists' license numbers appear. His admission in the July 1999 Consent Agreement that he had presented a false Ohio State Board of Psychology certificate to an employer suggests that he must have had some knowledge as to how psychologists'

⁸Tr. pp. 183-184.

license numbers appear. Otherwise, he wouldn't have been able to create the fraudulent certificate.

I refer to the 1999 Consent Agreement for no other reason than its impact upon Dr. Morgan's credibility as a witness. His explanations throughout the hearing were that any misunderstandings about his credentials were simply the result of "confusion" and were not intentionally misleading. Given that he had received a reprimand in July 1999 for fraudulently representing himself as a psychologist, it is incredible that the invoices in State's Exhibit A, dating from December 1999 through December 2000 still give every impression that he is a psychologist and not a counselor. Because of the 1999 action against his license, he surely was well aware of the requirements for representing his credentials accurately, and he has provided no valid explanation for why he failed to do that. His explanation that he added the words "emergency shelter" to the invoice to clarify it is useless, as it does *nothing* to clarify that he is an LPCC and not a psychologist. He still used the same words and abbreviations on the form that would lead one to believe he is a psychologist. In addition, he used the same invoice form that was used by Dr. Papanek to document his services, and they were eventually paid the same hourly rate. (See, e.g. Respondent's Exhibit 3, invoices of Paul Papanek.)

Rule 4757-5-01 of the administrative code prohibits not only direct misrepresentation of one's credentials, but also any misrepresentation that is indirect or by implication. The billing statements in State's Exhibit A provide ample evidence that Dr. Morgan misrepresented his credentials, *at least* indirectly or implicitly, if not directly. As the trier of fact, I did not believe the assertions that any misunderstandings created by his signature or credentialing style were inadvertent or the result of confusion over invoice formats.

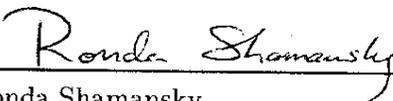
CONCLUSION OF LAW

R.C. 4757.36(A)(1) gives the Board the authority to suspend, restrict, and/or revoke Dr. Morgan's license if it finds that he has committed a violation of Chapter 4757 or the rules adopted under it. I conclude that Dr. Morgan violated Rule 4757-5-01(B)(1) by misrepresenting his professional qualifications. If the Board agrees that he has violated this Rule, it may take whatever action it deems appropriate against his license.

RECOMMENDATION

For the reasons detailed in this report, I recommend that the Board suspend Dr. Morgan's license to practice counseling for five years, along with any other requirements the Board finds appropriate for the reinstatement of his license after that five year period. Of course, the Board, in its discretion, may impose whatever sanction it finds suitable, including the revocation of his license. In this case, the Board is best suited to determine the penalty warranted because the professionals on the Board can better evaluate Dr. Morgan's explanations about billing codes and his reasons for using certain abbreviations and invoice formats.

In addition, because of Ms. Thomas's testimony that only a college degree was needed to perform the services Dr. Morgan was providing to MRDD clients, the Board should also speak to the issue of what kinds of counseling-related work Dr. Morgan may or may not pursue during any suspension term that is imposed.



Ronda Shamansky
Hearing Examiner

**CONSENT AGREEMENT
BETWEEN
JEFFREY MORGAN
AND THE
OHIO STATE COUNSELOR AND SOCIAL WORKER BOARD**

This CONSENT AGREEMENT is entered into by and between JEFFREY MORGAN, hereinafter, "MORGAN", and the STATE OF OHIO COUNSELOR AND SOCIAL WORKER BOARD, hereinafter "BOARD", the state agency charged with enforcing Chapter 4757 of the Ohio Revised Code and all rules promulgated thereunder.

MORGAN hereby acknowledges that he has read and understands this CONSENT AGREEMENT and has voluntarily entered into it without threat or promise by the **BOARD** or any of its members, employees or agents.

MORGAN is fully aware of his rights, including his right to be advised by counsel and his right to a hearing pursuant to Chapter 119 of the Ohio Revised Code on the issues which are the subject of this CONSENT AGREEMENT.

This CONSENT AGREEMENT contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this CONSENT AGREEMENT.

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

1. **MORGAN** is a Licensed Professional Clinical Counselor (E-1115) licensed to practice counseling in the state of Ohio, and is subject to the laws and rules of Ohio regulating the practice of counseling as outlined in Ohio Revised Code Chapter 4757.
2. During or after the fall of 1993, **MORGAN** presented a false Ohio State Board of Psychology certificate which stated that **MORGAN** was licensed as a psychologist to his employer, Upper Valley Medical Center in Troy, Ohio, when, in fact, **MORGAN** was not licensed as a psychologist in the State of Ohio. **MORGAN'S** conduct constitutes violations of Former Ohio Revised Code Section 4757.13(A), Former Ohio Administrative Code Section 4757-21-01(A)(5) and Former Appendix A: Code of Ethics of the American Association for Counseling and Development paragraph (A)(4).

3. **MORGAN ADMITS** the allegation referenced in paragraph two (2) referenced above.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal disciplinary proceedings, **MORGAN** knowingly and voluntarily agrees with the **BOARD** to the following terms and conditions:

- A. **MORGAN** is hereby **REPRIMANDED**. Said **REPRIMAND** will appear in **MORGAN'S** permanent licensure file.

It is hereby agreed by and between both parties that this **CONSENT AGREEMENT** hereby settles all issues concerning this matter.

By his signature on this **CONSENT AGREEMENT**, **MORGAN** acknowledges that in the event the **BOARD**, in its discretion, does not approve this **CONSENT AGREEMENT**, this settlement offer is withdrawn and shall be of no evidentiary value and shall not be relied upon or introduced in any disciplinary action or appeal by either party. **MORGAN** agrees that should the **BOARD** reject this **CONSENT AGREEMENT** and if this case proceeds to hearing, he will assert no claim that the **BOARD** was prejudiced by its review and discussion of this **CONSENT AGREEMENT** or of any information relating thereto.

MORGAN hereby releases the members of the **BOARD**, its officers and employees, jointly and severally, from any and all liability arising from the matter within.

This **CONSENT AGREEMENT** shall be considered a public record as that term is used in Section 149.43 of the Ohio Revised Code.

The **BOARD** shall incorporate this **CONSENT AGREEMENT** into a formal journal entry at its July, 1999, meeting.

This CONSENT AGREEMENT shall take effect upon the last date of signature below:

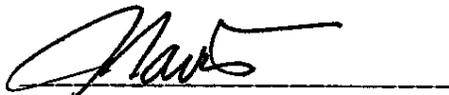
THE OHIO COUNSELOR AND
SOCIAL WORKER BOARD

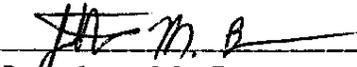

JEFFREY MORGAN


CHESTER PARTYKA, Chairman
Counselor and Social Worker Board

7/11/99
DATE

7/16/99
DATE


J. DAVID TURNER
Counsel for Jeffrey Morgan


Jonathan M. Bowman
Assistant Attorney General
Counselor and Social Worker Board

7/12/99
DATE

7/16/99
DATE